

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL J. BULLIS and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, GALLATIN NATIONAL FOREST, Philipsburg, MT

*Docket No. 00-2556 Submitted on the Record;
Issued June 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On September 17, 1998 appellant, then a 40-year-old seasonal forestry worker and technician, filed an occupational disease claim for compensation, alleging that on or about August 1, 1994, he realized that his asthma was caused or aggravated by his employment. He did not stop work.¹

In a letter dated February 11, 2000, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical evidence to establish his claim. He was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

In a February 25, 2000 statement, the employing establishment indicated that appellant was part of a range crew during the summer of 1998 that constructed fences and sprayed noxious weeds. The supervisor indicated that appellant started work in late May or early June and sprayed with either a back-pack or a truck-mounted unit. He noted that face masks, rubber gloves and cloth coveralls were available and that all employees were required to use rubber gloves and a long sleeved shirt when spraying. The supervisor indicated that, one afternoon, the crew came back from spraying and informed him that appellant was sick from spraying weeds and that he had asthma. The supervisor indicated that he spoke to appellant and confirmed that the herbicide spray fumes were bothering him. He subsequently removed appellant from that line of work and any type of hard physical work.

In a statement received by the Office on March 13, 2000, appellant indicated that he was a seasonal employee for about 15 years. He noted that during the first eight to ten years, he was

¹ The employing establishment noted that appellant no longer sprayed weeds or constructed fences.

called out several times a year to fight forest fires. Appellant was exposed to direct smoke on the fire line and no respirators or masks were provided. He indicated that he also worked in the timber department with leaded marking paint and no mask, for eight seasons on a daily basis.

Appellant noted that, in 1994, he became violently ill with coughing and breathing and went to see Dr. Herbert McFaddin, Board-certified in internal medicine, who diagnosed asthma. He indicated that Dr. McFaddin thought it could have been brought on by smoke exposure while fighting fires. Appellant stated that he had been on inhalers since that time. He also felt that the leaded paint was a cause of his asthma but forgot to mention it to Dr. McFaddin at that time.

On March 13, 2000 the Office received unsigned treatment notes for February 6, 1995 from Dr. McFaddin, who indicated that appellant originally was sick in August and that overexertion or cold air would trigger the symptoms of asthma.

In a decision dated May 1, 2000, the Office denied appellant's claim for compensation, as the medical evidence was insufficient to establish the claim.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on August 1, 1994.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based upon a complete factual and medical background of the claimant⁷, must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

In this case, appellant has established that he has asthma. However, he has failed to meet his burden of proof in establishing through medical evidence that his condition was caused by employment factors. Causal relationship is a medical issue, which requires a physician to explain how or why he believes that the accident, incident or work factor caused or affected the physical condition and the objective findings that support that conclusion.

The medical evidence accompanying appellant's claim is of little probative value. The only report is an unsigned treatment note from Dr. McFaddin. The Board has consistently held that unsigned medical reports are of no probative value.⁹ Appellant did not offer a medical opinion explaining the cause of his asthma or its relationship to his employment. In the absence of rationalized medical opinion evidence diagnosing a condition causally related to appellant's employment factors, appellant has failed to demonstrate that he sustained an injury in the performance of duty.¹⁰

⁶ The Board has held that, in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The May 1, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 18, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member